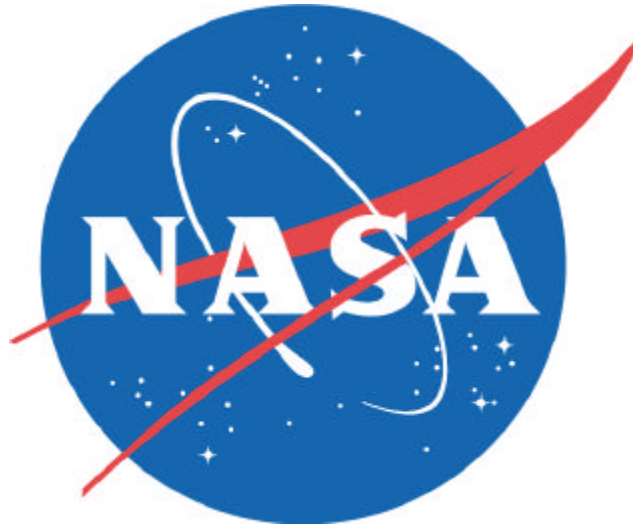


Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation



Office of General Counsel (HQ/Code G)

Office Work Instruction

Representing NASA in Litigation

Approved by: Original signed by Robert M Stephens, Deputy General Counsel, for
Edward A. Frankle
General Counsel

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Subject: Representing NASA in Litigation

DOCUMENT HISTORY LOG

<u>Status</u> <u>(Baseline/</u> <u>Revision/</u> <u>Canceled)</u>	<u>Document</u> <u>Revision</u>	<u>Effective</u> <u>Date</u>	<u>Description</u>
Baseline		1/10/00	

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1. Purpose

The purpose of this procedure is to document the process by which the Office of General Counsel assigns/represents NASA interests in all judicial or administrative proceedings.

2. Scope and Applicability

- 2.1 This OWI covers the process performed in Code G to represent NASA in direct litigation and litigation support.
 - 2.1.1 The Office of General Counsel represents NASA in direct litigation before administrative bodies and federal courts.
 - 2.1.2 The Office of General Counsel provides litigation support to the Department of Justice.
- 2.3 Litigation and/or litigation support includes litigation in administrative or judicial fora in substantive areas of expertise, which includes but is not limited to personnel, EEO, environmental, and torts claims litigation; pre-award and post-award contract litigation; intellectual property infringement; and the FOIA appeals process.

3 Definitions

- 3.1 AGC. Assistant General Counsel.
- 3.2 ALJ. Administrative Law Judge.
- 3.3 Attorney. Staff attorney within Code G assigned to represent NASA in litigation.
- 3.4 Case File. File that contains motions and supporting documents written or received during litigation. The case file may include, but is not limited to, motions paperwork; litigation, discovery, and hearings paperwork; and briefs.
- 3.5 Decision. Judgment rendered by Judge/ALJ as the outcome to litigation in which NASA is represented.
- 3.6 DOJ. Department of Justice.

Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation

3.7 EEO. Equal Employment Opportunity.

3.8 FOIA. Freedom of Information Act.

3.9 Forum. Venue in which litigation is conducted.

3.10 NARA. National Archives Records Administration.

3.11 NHB. NASA Handbook.

3.12 NPD. NASA Policy Directive.

3.13 NPG. NASA Policy Guidance.

3.14 NFS. NASA Federal Acquisition Regulations Supplement

3.15 Policy/Guidance. Document that implements at NASA Headquarters or Centers Judge/ALJ's decision from the case just litigated

3.16 Subcode Secretary. Secretary assigned to a Code G Subcode to address the administrative matters involved to implement this OWI.

3.17 Synopsis. Cover sheet attached to decision that lists issue(s) in dispute and judgment rendered.

4 References

4.1 NHB 1101.3 Section 406, Code G, Office of Legal Counsel

4.2 U.S.C.

4.3 Relevant Case Law

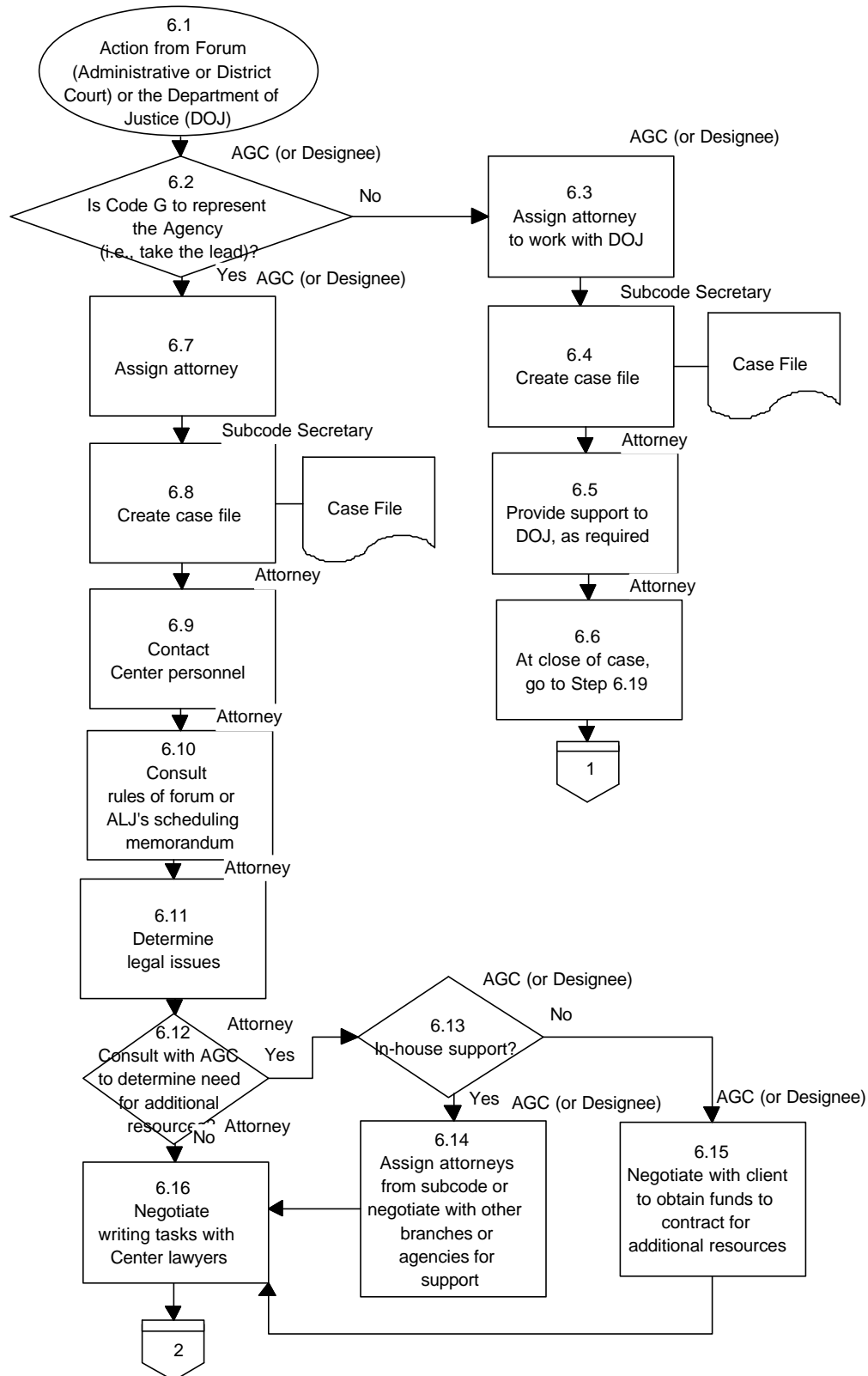
4.4 NFS

4.5 NPDs

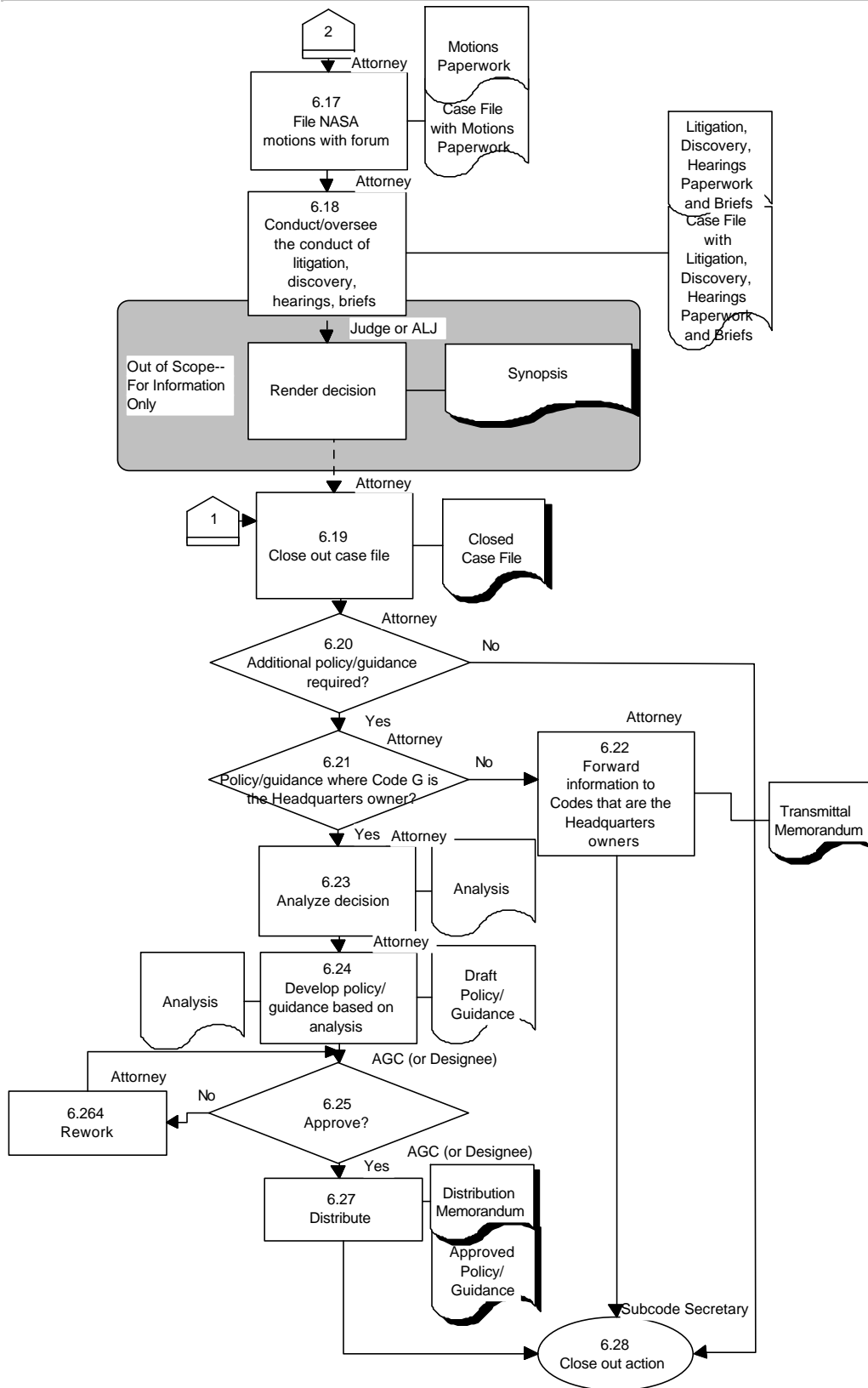
4.6 NPGs

Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation

5. Flowchart



Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation



Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation

6. Procedure

<u>Step</u>	<u>Actionee</u>	<u>Action</u>
6.1		Action from forum (administrative or district court) or DOJ.
6.2	AGC (or Designee)	Determine whether Code G is to take the lead and represent the Agency or whether it is to support DOJ. If it is to support DOJ, go to Step 6.3. If it is to represent the Agency, go to Step 6.9.
6.3	AGC (or Designee)	Assign attorney to support DOJ. The assignment is made based on litigation experience, subject matter expertise, and caseload.
6.4	Subcode Secretary	Create case file.
6.5	Attorney	Provide support to DOJ, as required.
6.6	Attorney	At close of case, go to Step 6.19.
6.7	AGC (or Designee)	Assign attorney to represent the Agency. The assignment is made based on litigation experience, subject matter expertise, and caseload.
6.8	Subcode Secretary	Create case file
6.9	Attorney	Contact Center personnel to: (1) prepare the administrative record that NASA will file at the forum and/or (2) do a first draft of the reply and discovery documents/documentation.
6.10	Attorney	Consult the rules of the forum to determine law and case precedent applicable to the venue in which the case is being litigated.
6.11	Attorney	Determine the legal issues that are to be the subject of the litigation.
6.12	Attorney	Determine whether additional resources will be needed to prepare the case. If yes, go to Step 6.13. If no, go to Step 6.16.
6.13	AGC (or Designee)	Make determination whether the anticipated workload requirements can be addressed exclusively within NASA. If yes, go to Step 6.14. If no, go to Step 6.15.
6.14	AGC (or Designee)	Assign attorneys from subcode or negotiate with other branches for support. Then go to Step 6.16.
6.15	AGC (or Designee)	Negotiate with client to obtain funds to contract for an attorney. Then go to Step 6.16.
6.16	Attorney	Negotiate writing tasks with Center lawyers to: (1) prepare the administrative record that NASA will file at the forum and/or (2) do a first draft of the reply and

Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation

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|------|-------------------|--|
| | | discovery documents/documentation |
| 6.17 | Attorney | File NASA motions with forum. |
| 6.18 | Attorney | Conduct/oversee the conduct of litigation, discovery, hearings, and brief preparation and completion. |
| 6.19 | Attorney | Close out case file at the conclusion of the case. Identify files to be included in the case file. At a minimum, this file should include the tasking and synopsis from the litigation |
| 6.20 | Attorney | Make determination whether decision requires additional policy or guidance to be developed. If yes, go to Step 6.21. If no, go to Step 6.28. |
| 6.21 | Attorney | Make determination whether the policy/guidance to be developed would be subject matter in which Code G is the Headquarters owner. The decision is based on the subject matter of the policy/guidance and the Attorney's professional judgment and knowledge of the codes and/or Centers potentially affected by the policy/guidance's scope or application. If yes, go to Step 6.23. If no, go to Step 6.22. |
| 6.22 | Attorney | Forward information about Judge or ALJ's decision to Codes that could be the potential Headquarters owners. The decision as to the Codes to which the information is forwarded is based on the subject matter of the policy/guidance and the Attorney's professional judgment and knowledge of the Codes potentially affected by the policy/guidance's scope or application. Then proceed to Step 6.28. |
| 6.23 | Attorney | Analyze decision. |
| 6.24 | Attorney | Develop policy/guidance based on analysis. |
| 6.25 | AGC (or Designee) | Review and concur on distribution of policy/guidance. If concurrence is given, go to Step 6.27. If concurrence is not given, go to Step 6.26. |
| 6.26 | Attorney | Rework and incorporate AGC (or Designee)'s comments. Return to AGC for review and concurrence (see Step 6.25). |
| 6.27 | AGC (or Designee) | Distribute policy/guidance to codes and/or Centers that could potentially be affected by the policy/guidance. The decision as to which codes and/or Centers to include for distribution is based on the subject matter of the policy/guidance and the Attorney's professional judgment and knowledge of the codes and/or Centers potentially affected by the policy/guidance's scope or application. |
| 6.28 | Subcode | Close out action. Retain required records identified in |

Responsible Office: Office of General Counsel (Code G)
Subject: Representing NASA in Litigation

Secretary Step 6.19 and Section 7.0.

7. Quality Records

Record Identification	Owner	Location	Record Media: Electronic or Hard Copy	Schedule Number and Item Number (NPG 1441.1)	Retention/Disposition
Synopsis	Code G Office Engaged in Litigation	Files of Code G Office Engaged in Litigation	Hard Copy	Schedule 2, Item 5	Retire to FRC 2 years after year in which court rendered final decision. Destroy 20 years after final decision.
Closed Case File	Code G Office Engaged in Litigation	Files of Code G Office Engaged in Litigation	Hard Copy	Schedule 2, Item 5	Retire to FRC 2 years after year in which court rendered final decision. Destroy 20 years after final decision.
Transmittal Memorandum	Code G Office Engaged in Litigation	Files of Code G Office Engaged in Litigation	Hard Copy	Schedule 1, Item 25	Remove from related records and destroy or delete when work is completed or when no longer needed for operational purposes.
Distribution Memorandum	Code G Office Engaged in Litigation	Files of Code G Office Engaged in Litigation	Hard Copy	Schedule 1, Item 25	Remove from related records and destroy or delete when work is completed or when no longer needed for operational purposes.
Approved Policy/Guidance	Code G Office Engaged in Litigation	Files of Code G Office Engaged in Litigation	Hard Copy	Schedule 1, Item 12A	Permanent. Retire to FRC when 5 years old. Transfer to NARA in 5 year blocks when 20 years old.